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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. MAURICE ANTHONY ROBERTS, Defendant and Appellant.	2d Crim. No. B265487 (Super. Ct. No. TA056736) (Los Angeles County)

Maurice Anthony Roberts petitioned to have his "Three Strikes" life term reduced to a two strike term pursuant to Penal Code section 1170.126.[1] The trial court denied the petition on the ground that he presents an unreasonable risk of danger to public safety.

Here we hold that the definition of "unreasonable risk of danger to public safety" contained in section 1170.18,

[1] All statutory references are to the Penal Code unless otherwise stated.

subdivision (c) does not apply to section 1170.126.[2] We affirm the order denying Roberts's petition.

FACTS

Roberts was found guilty by a jury in 2000 of one felony count of selling a controlled substance, cocaine. (Health & Saf. Code, § 11352, subd. (a).) In addition, the jury found he had four prior violent or serious felony convictions. The trial court sentenced him to 25 years to life under the Three Strikes law, plus one year for each prior felony conviction, for a total of 29 years to life.

In December 2012 Roberts filed a petition to recall his sentence and to be sentenced as a second strike offender under section 1170.126. The People opposed the petition on the ground that Roberts poses an unreasonable risk of danger to public safety.

The People's evidence showed Roberts had suffered seven prior felony convictions including assault with a deadly weapon, two robberies and a burglary between 1980 and 2000. He had nine parole violations.

Roberts also has a history of 13 prison rule violations. Prison rule violations are classified from A to F, with A being the most serious. Seven of the violations were classified as F; five were classified as D; and one, possession of a deadly weapon in November 2007, was classified as A-1. A-1 is the most serious classification. His most recent charge was in November 2011, participating in a riot. That charge was classified as D.

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[2] This issue is pending before the California Supreme Court in *People v. Valencia* (2014) 232 Cal.App.4th 514, review granted February 18, 2015, S223825, and *People v. Chaney* (2014) 231 Cal.App.4th 1391, review granted February 18, 2015, S223676.

Defense Evidence

Melvin Macomber, Ph.D. is an expert in correctional psychology. He interviewed Roberts for three hours and administered a series of tests. Macomber produced a written report and testified at the hearing. He said that over the course of time, Roberts has gained insight into the wrong things he has done in his life and feels remorseful. That bodes well for his future decision making. Roberts's test scores also show a low to moderate tendency to be violent and reoffend. Roberts's risk would be lower if he is released to a program called Amity Foundation. Roberts has been accepted to the program.

Roberts's prison record shows he completed Adult Basic Education I through III and obtained a certificate in electronic construction and repair.

Roberts's California Static Risk Assessment score is 2, indicating a moderate risk of incurring a felony arrest within three years of release on parole.

The trial court found the prosecution proved that Roberts currently presents an unreasonable risk of danger to public safety. The court denied Roberts's petition.

DISCUSSION

I

Roberts contends the definition of "unreasonable risk of danger to public safety" contained in Proposition 47 (§ 1170.18, subd. (c)) applies to his petition pursuant to Proposition 36 (§ 1170.126).

Under the original version of the Three Strikes law, a defendant who had two prior serious or violent felony convictions could be sentenced to a life term in prison if he suffered another conviction for any felony. (*In re Coley* (2012) 55 Cal.4th 524, 528.) That was true even if the so-called triggering felony was neither

serious nor violent and may be widely perceived as relatively minor. (*Ibid.*)

Proposition 36, passed by the California electorate in November 2012, amended the Three Strikes law to require that the offense resulting in a life term be a serious or violent felony or the prosecution has plead and proved an enumerated disqualifying factor. (*People v. Osuna* (2014) 225 Cal.App.4th 1020, 1026.) It also added section 1170.126. (*Ibid.*)

Section 1170.126 allows persons currently serving a life term under the Three Strikes law for a felony not defined as either serious or violent and who have no disqualifying factor to petition the court to be resentenced as a "second strike" offender. (§ 1170.126, subds. (b) & (c).)

Section 1170.126, subdivision (f) requires the court to resentence a qualifying petitioner "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."

Section 1170.126, subdivision (g) provides: "In exercising its discretion in subdivision (f), the court may consider: (1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety."

In November 2014 the California electorate passed Proposition 47. Proposition 47 reduced possession of a controlled substance for personal use and certain nonviolent, non-serious property crimes involving $950 or less to misdemeanors. It also added section 1170.18.

Section 1170.18, subdivision (a) allows persons currently serving a sentence for a felony conviction that is now a misdemeanor to petition the court to be resentenced as a misdemeanant. Subdivision (b) requires the trial court to grant the petition "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."

The heart of Roberts's argument lies in section 1170.18, subdivision (c). That subdivision states:

"As used throughout this Code, 'unreasonable risk of danger to public safety' means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667."

Section 667, subdivision (e)(2)(C)(iv) lists felonies, sometimes called "super strike" offenses. The list includes certain sexual offenses against a child; homicide offenses; solicitation to commit murder; assault with a machine gun on a peace officer or firefighter; possession of a weapon of mass destruction; and any serious or violent felony punishable by life imprisonment or death.

Roberts argues that the phrase "[a]s used throughout this Code" contained in section 1170.18, subdivision (c) means its definition of "'unreasonable risk of danger to public safety'" applies to his petition pursuant to section 1170.126. Roberts concludes that because there is no evidence he poses a risk of committing a "super strike" offense, the trial court erred in denying his petition on the ground that he poses an unreasonable risk of danger to public safety.

The question is whether section 1170.18, subdivision (c) modifies section 1170.126, subdivision (f). We hold it does not.

We apply the same rules that govern statutory construction to interpreting a voter initiative. (*People v. Jones* (1993) 5 Cal.4th 1142, 1146.) The fundamental purpose is to ascertain the intent of the voters so as to effectuate the purpose of the law. (*Ibid.*) The literal language of a statute will not prevail if it conflicts with the lawmaker's intent. (*People v. Osuna*, *supra*, 225 Cal.App.4th at p. 1034.) In determining the voter's intent, we may refer to such indicia as the analysis and arguments contained in the official ballot pamphlet. (*Ibid.*)

The ballot pamphlet for Proposition 47 focuses on reducing certain felonies viewed as relatively benign to misdemeanors and the resentencing as misdemeanants of persons serving prison terms for those offenses. Roberts points to nothing in any of the ballot literature that indicates Proposition 47 is intended to modify the Three Strikes law. We are certain that voters would be shocked to learn that a proposition focusing on low-level offenders was intended to release from life terms prisoners with at least two violent or serious felony convictions and who, in fact, are an unreasonable danger to public safety.

Moreover, Roberts's interpretation of section 1170.18, subdivision (c) conflicts with subdivision (n) of the same section. Subdivision (n) provides: "Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act."

The Three Strikes law cannot be reasonably interpreted as falling within the purview of section 1170.18 or its related sections. It is an entirely different sentencing scheme. Roberts's interpretation of section 1170.18, subdivision (c) would certainly diminish or abrogate the final judgment of those sentenced under the Three Strikes law.

The most reasonable interpretation of section 1170, subdivision (c) that complies with the intent of the electorate is

that the subdivision applies only to section 1170.18. It does not apply to section 1170.126.

II

Roberts contends the trial court abused its discretion by failing to conduct an independent assessment on the issue of dangerousness.

But the court's memorandum of decision shows it carefully considered all of the evidence including Dr. Macomber's testimony and report. The record shows the trial court made a careful and independent assessment of the evidence.

DISPOSITION

The judgment (order) is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Scott M. Gordon, William C. Ryan, Judges

Superior Court County of Los Angeles

Adrian K. Panton, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah A. Hill, J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.